



# राजपत्र, हिमाचल प्रदेश

## (असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, बुधवार, 16 दिसम्बर, 1964/ 25 अग्रहायण, 1886

### GOVERNMENT OF HIMACHAL PRADESH CO-OPERATIVE DEPARTMENT NOTIFICATION

*Simla-4, the 24th November, 1964*

**No. 10-128/61-Co-op-II.**—In exercise of the powers conferred by section 39 of the Punjab Co-operative Land Mortgage Banks Act, 1957 (Punjab Act No. 26 of 1957) as extended to the Union Territory of Himachal Pradesh, the Lieutenant Governor, Himachal Pradesh, is pleased to make the following Rules, to carry out the purposes of the said Act:—

### THE HIMACHAL PRADESH CO-OPERATIVE LAND MORTGAGE BANKS RULES

#### CHAPTER I PRELIMINARY

1. *Short title and commencement.*—(1) These rules may be called the Himachal Pradesh Co-operative Land Mortgage Banks Rules, 1964.

(2) These shall come into force at once.

2. *Definitions.*—In these rules, unless the subject or context otherwise requires,

(a) Applicant, means:

(i) in case of an application under Chapter IV of the Act, the Board, and

(ii) in the case of an application under Chapter V of the Act, the Board or any person duly authorised by the Board;

(b) "Distrainer" means an officer of the Co-operative Department who is empowered by the Registrar to distrain and sell the produce

of the mortgaged land including the standing crops thereon in accordance with the provisions of Chapter IV of the Act;

(c) "Form" means form appended to these rules; and

(d) "The Act" means the Punjab Co-operative Land Mortgage Banks Act, 1957 (Punjab Act No. 26 of 1957) as extended to the Union Territory of Himachal Pradesh.

## CHAPTER II

### PROCEDURE IN THE DISTRAINT AND SALE OF PRODUCE

3. *Form of application and procedure on receipt thereof*—S. 12 and 39 (i).—The application under sub-section (i) of section 12 of the Act shall be in Form A and shall be signed by a person duly authorised by the Board. On receipt of the application the Registrar, shall, if satisfied, that the particulars set forth in the application are correct, prepare a demand notice in duplicate in Form B setting forth the name of the defaulter and the amount due together with interest and forward the same to the distrainer concerned.

4. *Time of distraint*—S. 39(2) (i).—The distraint shall be made only after sunrise and before a sunset.

5. *Distraint of produce*—S. 39 (2) (1).—Where the property to be distrained is the produce of the mortgaged land including the standing crops thereon, the distraint shall be made by affixing a copy of the warrant of distraint,—

(a) Where such produce is standing crop, on land on which such crop has grown; or

(b) Where such produce has been cut or gathered, on the thrashing floor or place for treading out grain or the like or fodder stack on or in which it is deposited;

and another copy on the outer door or on some other conspicuous part of the house in which the defaulter ordinarily resides and the produce shall thereon be deemed to have passed into possession of the distrainer.

6. *Defaulter to be served with notice*—S. 39(2)(ii).—As soon as the distraint is made after issuing a demand notice under section 13 of the Act the distrainer shall serve on the defaulter a notice containing list of the property distrained and information as regards the place, the day and hour, at which the distrained property will be sold:

Provided that where owing to the absence of the defaulter it is not possible to serve such notice upon him the distrainer may serve it upon any adult male member of the defaulter's family at his usual place of abode or upon the authorised agent of the defaulter and when such service is also not possible, shall affix it on some conspicuous part of his residence or of his land:

Provided further that where the defaulter does not reside in the village in which the land, the standing crops or the produce of which is distrained, is situated, the notice shall be affixed on the land and a copy of it shall be sent by registered post to the defaulter to his last known place of residence.

7. *Custody of distrained property*—S. 39 (2) (ii).—The distrainer shall make proper arrangements for custody and preservation of the distrainer property during the interval between the distraint and the sale. The applicant, the president, secretary or manager of the Mortgage Bank concerned, authorised in this behalf by the applicant shall, if required by the distrainer, undertake the custody and preservation of the property distrained and shall be responsible for any loss or damage to the distrained property incurred owing to the negligence of the person to whom the

property is so entrusted.

8. *Storage of distrained crops*—S. 39 (2) (ii).—Where the growing crops of the mortgaged land belonging to a defaulter are distrained, the distrained may cause them to be sold when they are ripe or harvested, and may cause them to be stored in proper places until sold.

9. *What places distrainer may force upon*—S. 39 (2) (i).—It shall be lawful for the distrainer to force open any stable, cow house, granary, godown, outhouse or other such building, and he may also enter any dwelling house, for the purpose of distraining the produce of the mortgaged land stored therein:

Provided always that it shall not be lawful for such distrainer to break open or enter any place if such place is an apartment in the actual occupancy of a woman, except as hereinafter provided.

10. *Power of distrainer to force open doors in presence of police officers*—S. 39 (2) (1).—(1) Where a distrainer has reason to believe that the produce of the mortgaged land is stored within a dwelling house the outer door of which is shut, or within any apartment occupied by a woman who according to custom does not appear in public the distrainer shall represent this fact in writing to the officer-in-charge of the police station in which that dwelling house or apartment is situated.

(2) On such representation, the officer-in-charge of the police station shall send a police officer not below the rank of a head constable to the spot, in the presence of whom the distrainer may force open the outer door of such dwelling house.

(3) The distrainer shall, in the presence of such police officer, before entering an apartment in the actual occupancy of woman, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing and may then open the apartment and enter it for the purpose of distraining the produce of the mortgaged land, if any desposited therein; but such property, if found, shall be immediately removed from such apartments, after which they shall be left free to its occupants.

11. *Proclamation of the time and place of sale of property to be sold*—S. 29 (2) (iv) and S. 39 (2) (v).—(1) The distrainer shall on the day previous to and on the day of sale before the commencement of sale, cause a proclamation of the time and place of the intended sale to be made by beat of drum in the village in which the defaulter resides or the produce is kept and in such other places as the distrainer may consider necessary to give due publicity to the sale.

(2) No sale shall take place until after the expiration of a period of 15 days from the date of the service of the demand referred to in section 13 of the Act.

Provided that where the property distrained is subject to speedy and natural decay the distrainer may sell it at once.

12. *Sale how conducted*—S. 14(4) and 39 (2) (v).—(1) At the appointed time and place the distrainer shall sell in public auction the distrained property or such part thereof, as may be necessary, in one or more lots as the distrainer may consider desirable and dispose of the same to the highest bidder.

(2) The distrainer may, in his discretion, adjourn the sale to a specified day and hour after recording his reason for such adjournment.

(3) Where a sale is adjourned under sub-rule (2) for a longer period than seven days, a fresh proclamation under rule 11 shall be made unless the

defaulter consents to waive it.

13. *Withdrawal of distraint on tender of moneys due and expenses prior to sale*—S. 14 (1) and 39 (2) (v).—When prior to the day fixed for sale the defaulter or any person acting on his behalf, or any person claiming an interest in the property distrained pays to the Board, the Registrar or the distrainer the full amount due, including interest, travelling allowance and other expenses incurred in distraining and proclaiming the sale, the distrainer shall not proceed with the sale and shall release the property forthwith.

14. *Payment on purchase of distrained property*—S. 16 (1) and (2).—The property shall be paid for in cash at the time of sale or as soon thereafter as the distrainer shall appoint, and the purchaser shall not be permitted to carry away any part of the property until he has paid for it in full.

15. *Resale in case of default*—S. 39 (2) (vii).—If the purchaser makes a default in the payment of purchase money, the property shall be resold and the proceeds of such resale shall be applied in the manner provided in section 14 of the Act. Any deficiency of price which may happen to a resale by reason of purchaser's default and all expenses attending such resale shall at the instance of either the applicant or the defaulter be recoverable from the defaulting purchaser.

16. *Investigation of claims to any right or interest in distrained property*.—S. 39 (2) (iii).—(1) Where any claim is preferred by any person other than the defaulter to any right or interest in the distrained property, the distrainer shall investigate the claim and dispose of it on its merits:

Provided that no such investigation shall be made where the distrainer considers that the claim was designedly or unnecessarily delayed.

(2) Where the property to which the claim applies has been advertised for sale, the distrainer may postpone the sale pending the investigation of claim.

### CHAPTER III

#### PROCEDURE IN THE SALE OF MORTGAGED PROPERTY

17. *Form and contents of application for sale of immovable property and procedure on receipt thereof*—S. 16(1) and 39(2)(v).—(1) The application under sub-section (1) of section 16. of the Act shall be in Form C and shall be signed by the Board or any person duly authorised by the Board. It shall state the amount due for recovery including interest, expenses incurred in the service of the notice referred to in clause (b) of sub-section (2) of section 15 of the Act, the name, and addresses of person on whom such notice was served. It shall also contain such description of the immovable property to be proceeded against as may be sufficient for its identification and in case such property can be identified by boundaries or numbers in the revenue record, the specifications of such boundaries or numbers.

(2) On receipt of the application the sale officer shall give a notice in writing to all the persons referred to in clause (b) of sub-section (2) of section 15 of the Act in Form D stating the amount claimed by the State Bank including expenses incurred by it in the service of notice, the particulars of the properties to be sold in case of non-payment, and the date on or after which the sale shall take place.

18. *When defaulter neglects to pay*—S. 16(1)—If before the expiration of the time allowed in the notice issued under sub-rule (2) of the rule 17 the amount specified in each notice is not paid, the sale officer shall, after giving notice to the State Bank, proceed to sell the immovable property specified in the application in the manner laid down in rule 19.

**19. Proclamation before sale—S. 16(1) and 39 (2) (v).—**(1) The sale officer shall cause a proclamation of the intended sale to be made in Form E.

(2) Such proclamation shall state the time and place of sale, and specify as fairly and accurately as possible:—

(a) the property to be sold;

(b) the revenue or rent payable in respect thereof;

(c) the amount for the recovery of which the sale is intended to be made; and

(d) every other thing which the sale officer considers material for a purchaser to know in order to judge the nature and value of the property.

(3) For the purpose of ascertaining the matters to be specified in the proclamation, the sale Officer may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any documents in his possession or power relating thereto.

(4) Every proclamation shall be published by pasting a copy thereof in a conspicuous part in the office of the District Co-operative and Supplies Officer of the district and the office of the Tehsildar of the tehsil in which the property to be sold is situated at least ten days before the date fixed for the sale and also by beat of drum in the village where the mortgaged property to be sold, is situated on two consecutive days previous to the date of sale and on the day of sale, prior to the commencement of the sale.

**20. Sale to be by public auction—S. 16(1) and (2).—**(1) The sale of the mortgaged property shall be subject to the previous charge if any on the basis of a registered deed on the property, and shall be by public auction to the highest bidder.

(2) The sale officer may, in his discretion, adjourn the sale to a specified day and hour, recording his reasons for such adjournment.

(3) Where a sale is adjourned under sub-rule (2) for a longer period than seven days, a fresh proclamation under rule 19 shall be made and published unless the mortgagor consents to waive it.

**21. Deposit by purchaser and resale on default—S. 39(2) (vii) and (viii).—**(1) When the highest bid at the auction has been ascertained, the person who made that bid shall, on the requisition of the sale officer, pay to that officer a deposit of fifteen percent of the amount of his bid, and shall on payment thereof, be declared to be the purchaser. If the person who made the highest bid fails to pay such deposit, the property shall forthwith be resold.

(2) Where the State Bank, at whose instance the property is sold, is the purchaser and is entitled to set off the purchase money under rule 26, the sale officer may dispense with the requirement of this sale.

**22. Time for payment of the balance of the purchase money—S. 16(1) and 39(2) (vii).—**The remaining amount of the purchase money shall be paid by the purchaser to the sale officer within 15 days from the date of sale:

Provided that in calculating the amount to be so paid to the sale officer the purchaser shall have a right to claim set off to which he may be entitled under rule 26.

**23. Procedure in default of payment—S. 16(1) and 39(2)(viii).—**In default of payment of the purchase money within the period mentioned in rule 22 the deposit may if the sale officer thinks fit, after defraying all costs, charges and expenses of the sale, be forfeited to the Government and the property shall be resold and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.



**24. Defaulting purchaser answerable for loss on resale—S. 16(1) and 39(2)(vi) and 39(2)(viii).—**Any deficiency of price which may happen on a resale by reason for purchaser's default, and all expenses attending such resale shall, at the instance of either the applicant or the mortgagor, be recoverable from the defaulting purchaser.

**25. Notification on resale—S. 16(1) and 39(2)(viii).—**Every resale of mortgaged property, in default of payment of the purchase money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore prescribed for the sale.

**26. Set off where State Bank is purchaser—S. 39(1).—**Where the State Bank at whose instance the mortgaged property is sold purchases it, the purchase money and the amount due shall be set off against one another, and the sale officer shall enter up satisfaction of payment of the mortgaged money in whole or in part accordingly.

**27. Resale of property—S. 16(1) and 39(1).—**Where prior to the day fixed for sale the mortgagor or any person acting on his behalf or any person claiming an interest in the mortgaged property tenders payment of the full amount due including interest, travelling allowance, other costs, charges and expenses incurred in connection with the sale, the sale officer shall not proceed with the sale and shall release the property forthwith.

**28. Report of sale—S. 16(1) and 39(1).—**The sale officer shall on the conclusion of the sale make a report to the State Bank at whose instance the property was brought to sale regarding the results of the sale.

**29. Return of purchase money in certain cases—S. 17(1) and 2 and 3(i)(i).—**Whenever the sale of the mortgaged property is set aside under sub-section (2) of section 17 of the Act, the deposit or the purchase money as the case may be shall be returned to the purchaser who shall also be entitled to get a sum equal to two percent of the purchase money deposited by the mortgagor or the person having a right or interest in the mortgaged property under sub-clause (b) of sub-section (i) of section 17 of the Act.

#### CHAPTER IV MISCELLANEOUS

**30. Certified copies of documents—S. 35-(1).—**No copy of a document or of any entry therein granted under section 35 of the Act shall be admissible in evidence unless it contains a certificate to the following effect;

"I certify that the above is a true copy of an entry or entries contained in the..... and that I have compared the above copy with the original entry or entries and found them to be correct and the original..... containing the entry or entries are still in the record of the Mortgage Bank.

*Signature."*

2. The certificate referred to in sub-rule (1) shall be signed by an officer of the Mortgage Bank.

(3) The charges to be levied for the supply of a certified copy under section 35 shall be twenty five Paise for every hundred words or part thereof subject to a minimum of one rupee.

**31. Receipt for payment of arrears—S. 14(1) and 16(1).—**Every person making a payment towards any money due, for the recovery of which an application has been made under these rules, shall be made entitled to a receipt for

the amount signed by the distrainer or the sale officer, as the case may be. Such receipt shall state the name of the person making the payment and subject matter in respect of which the payment is made.

FORM A

(See rule 3)

FORM OF APPLICATION FOR DISTRAINT AND SALE OF  
PRODUCE AND/OR STANDING CROPS

1. Applicant.....
2. Defaulter.....son of.....  
Village....., Post Office.....,  
Police Station....., Tehsil.....,  
District.....
3. Particulars of the land mortgaged:  
Name of the Village.....Khata-Khatauni No.....  
Area....., Post Office....., Police Station.....  
....., Tehsil.....District.....
4. Date of default of:—  
1st instalment.....Next instalment.....
5. Amount under default on account of:—  
Principal.....Interest upto.....Total.....

The Applicant seeks that the sums under default may be got recovered by distraint and sale of produce and/or stading crops of the mortgaged land as detailed above.

Signature of the person authorised by the  
Board in this behalf.

FORM B

(See rule 3)

DEMAND NOTICE

1. Applicant.....
2. Name of the defaulter....., son of.....  
Village....., Post office.....  
Police Station....., Tehsil.....,  
District.....
3. Amount under default on account of—  
Principal.....Interest.....Total.....

Forwarded to the distrainer for necessary action.

Registrar

FORM C

(See Rule 17)

FORM OF APPLICATION FOR SALE OF MORTGAGED PROPERTY

1. Applicant.....

2. Mortgagor....., son of.....  
 Village....., Post Office.....  
 Police Station....., Tehsil....., District.....
3. Description of the mortgaged property—  
 Name of the Village ..... Khata Khatauni No.....  
 Khasra No..... Area.....  
 Post Office.....  
 Police Station.....  
 Tehsil.....  
 District.....
4. Amount due for recovery:—

	Principal	Interest upto	Total
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Expenses incurred by the Bank.

5. The names and addresses of the persons on whom notice under section 15(2). (b) have been served.

Serial No.	Name with full addresses
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It is submitted that the property mortgaged as detailed above be sold and the dues recovered.

*Signatures of the person authorised by the  
Board in the behalf.*

FORM D

(See Rule 17(1))

### NOTICE UNDER RULE 17 (1) BY THE SALE OFFICER

Whereas an application has been made by.....  
under section 16(1) of the Act;

Now, therefore, you are hereby served with this notice as required by the aforesaid section. The particulars of the defaulter, the amount due from him including the expenses incurred by the Bank and specifications of the mortgaged property proposed to be sold are given herebelow. The aforesaid property will be sold on or after the.....

1. Name of the defaulter..... son of.....  
 Village....., Post Office.....  
 Police Station....., Tehsil.....  
 District.....

2. Amount due:—

Principal	Interest upto	Expenses incurred by the Bank	Total
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3. Particulars of property to be sold in case of non-payment.



Name of the village....., Khata Khatauni No.....  
 Khasra Nos..... Area.....  
 Post Office .....  
 Police Station .....  
 Tehsil....., District....., Sale Officer.....

FORM E

(See Rule 19(1))

FORM OF PROCLAMATION OF THE SALE UNDER RULE 19(1)

1. Applicant .....
2. Defaulter.....
3. Date and time of sale.....
4. Place .....
5. Particulars of property to be sold—  
 Name of village.....  
 Khata-Khatauni No.....  
 Khasra No. .... Area.....  
 Post Office .....  
 Tehsil .....  
 District .....
6. Amount due for recovery;

Principal	Interest upto	Expenses
Total	..	

*Note.*—The interest is to be calculated up to date.

8. Any other particulars.

.....  
*Sale Officer.*

By order,  
 S. R. MAHANTAN,  
 Under Secretary.

